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July 27, 2018

The Honorable Chuck Grassley
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein:

On June 7, 2018, President Trump nominated Eric E. Murphy and Chad A. Readler to serve on the United States Court of Appeals for the Sixth Circuit. Mr. Murphy is currently the State Solicitor of Ohio. Mr. Readler is currently the Principal Deputy and acting Assistant Attorney General for the Civil Division at the U.S. Department of Justice. In connection with the Senate's fundamental constitutional obligation to advise and consent on judicial nominees, I write to urge the Committee to evaluate closely these two nominees' past representations of the tobacco industry.

Prior to their current positions, Mr. Murphy and Mr. Readler were partners at the law firm Jones Day LLP. That firm has for many years represented the R.J. Reynolds Tobacco Company ("RJR"), a company that for decades has sought, including through fraud, to disclaim responsibility and avoid legal liability for smoking-related illness and to weaken or prevent laws and regulations that limit tobacco companies' ability to market their deadly products, including to our nation's youth.

Both men personally and extensively represented RJR during their time at Jones Day. For example, Mr. Murphy was counsel to RJR on a series of petitions of certiorari to the United States Supreme Court that sought to limit RJR's liability from a landmark tobacco lawsuit in Florida, *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006). Mr. Readler represented RJR in products liability and commercial speech cases.¹

If confirmed, Mr. Murphy and Mr. Readler could serve on the bench for decades and will inevitably decide cases with enormous public health implications. Accordingly, it is incumbent upon the Senate to question both men rigorously to evaluate whether they could rule fairly on tobacco-related matters that may come before them, under what circumstances they would agree to recuse themselves from such

¹ See, e.g., *Chad A. Readler*, The Federalist Society, <http://www.fed-soc.org/experts/detail/chad-a-readler> (last visited Mar. 9, 2017) ("In product liability matters, Chad represents clients including R.J. Reynolds . . . and has represented R.J. Reynolds in commercial speech litigation."); *Chad A. Readler*, FindLaw (Jan. 7, 2014), http://pview.findlaw.com/view/2209863_1 (listing three cases in which Mr. Readler represented R.J. Reynolds Tobacco Company); Brian Meyer, *R.J. Reynolds Challenging City's Effort to Restrict Posting of Tobacco Ads*, Buff. News (Sept. 3, 2005), <http://buffalonews.com/2005/09/03/r-j-reynolds-challenging-citys-effort-to-restrict-posting-of-tobacco-ads/> (quoting Mr. Readler in advocacy for R.J. Reynolds Tobacco Company, which was then threatening to sue the city of Buffalo for its efforts to "wipe out tobacco ads around schools, playgrounds and day care centers").

cases, and what they would do to avoid any concern that their former private sector representations could influence their decision-making on the bench.

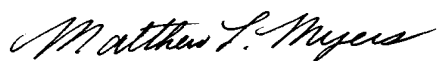
To that end, and to fulfill the Senate's fundamental advise-and-consent responsibilities, we urge the Judiciary Committee to ask these nominees to address the following issues:

- Disclose all cases in which they represented RJR, its parents, subsidiaries or affiliates, or other members of the tobacco industry, summarize the claims at issue in each such case, and provide the number of hours they worked on each such matter.
- If they have represented RJR, its parents, subsidiaries or affiliates, or other tobacco industry interests in regulatory matters, including preparing or reviewing comments to FDA regulations, proposed rules, or guidance documents concerning tobacco products, identify all such matters and identify the number of hours they worked on each such matter.
- How much in legal fees did the matters in which they represented RJR, its parents, subsidiaries or affiliates, or other tobacco industry interests generate for Jones Day?
- How much in legal fees did Jones Day receive from RJR, its parents, subsidiaries or affiliates, or other tobacco companies during each year they worked at the firm?
- During the time they worked at Jones Day did they ever request that they not be assigned to matters in which Jones Day represented tobacco industry actors or indicate to the firm that they would prefer not to work on such matters?
- How would they ensure that their prior work representing RJR, its parents, subsidiaries or affiliates, would not influence any decision they may make on the bench, if confirmed?
- If confirmed, would they recuse themselves from cases involving the tobacco industry? Why or why not?
- If confirmed, would they recuse themselves from cases involving RJR, its parents, subsidiaries or affiliates,? Why or why not?
- What standards would they apply to determine whether to recuse themselves in any particular case?
- They must be familiar with the federal government's RICO lawsuit against the U.S. tobacco industry, *United States v. Philip Morris USA, Inc.*, 449 F. Supp. 2d 1 (D.D.C. 2006), *aff'd* 566 F.3d 1095 (D.C. Cir. 2009), in which RJR and other tobacco companies were found to have violated RICO by engaging in a decades-long conspiracy to defraud the American public about the health harms from their products. What is their view about the injunctive remedies ordered by the District Court in that case, including the requirement that the defendants publish statements disclosing the truth about their lethal and addictive products?

- In that case Judge Kessler found that “At every stage, lawyers played an absolutely central role in the creation and perpetuation of the Enterprise and the implementation of its fraudulent schemes. They devised and coordinated both national and international strategy; they directed scientists as to what research they should and should not undertake; they vetted scientific research papers and reports as well as public relations materials to ensure that the interests of the Enterprise would be protected; they identified ‘friendly’ scientific witnesses, subsidized them with grants from the Center for Tobacco Research and the Center for Indoor Air Research, paid them enormous fees, and often hid the relationship between those witnesses and the industry; and they devised and carried out document destruction policies and took shelter behind baseless assertions of the attorney client privilege.” In the course of their representation of tobacco industry clients did they become aware of any such conduct by any lawyers representing that industry, including those at Jones, Day? If so, what did they do about it?
- [For E. Murphy] In his time as Ohio’s State Solicitor, has his office been involved in any cases involving RJR, its parents, subsidiaries or affiliates, or the tobacco industry? If so, has he recused himself from participation in such matters. If not, why not? What steps, if any, did he take to ensure that his participation in such matters was in line with governmental and ethical standards?
- [For C. Readler] In his time as Principal Deputy and acting Assistant Attorney General for the Civil Division at the U.S. Department of Justice, list all tobacco-related matters in which he has been involved, directly or indirectly.
- [For C. Readler] He appeared as counsel for the United States in *Cyclops Vapor 2, LLC v. U.S. Food & Drug Admin.*, No. 2:16-cv-556 (M.D. Ala.), a challenge to FDA’s “deeming rule,” which subjected certain tobacco products to the requirements of the Family Smoking Prevention and Tobacco Control Act. What steps, if any, did he take to ensure that his appearance in that case was in line with governmental and ethical standards?

The responses that Mr. Murphy and Mr. Readler provide will help the Judiciary Committee assess these nominees and their ability to rule fairly and impartially on tobacco-related matters if confirmed. We appreciate your consideration of this request.

Sincerely,



Matthew L. Myers

cc: Senator Sherrod Brown
Senator Rob Portman